



655

OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

April 24, 1939

Honorable K. D. Hall  
County Attorney  
Refugio, Texas

Dear Sir:

Opinion No. O-655

Re: Whether Board of Trustees or  
Commissioners' Court should  
canvass returns in elections  
for trustees in common school  
districts and in independent  
school districts having less  
than 500 scholastics, and what  
authority should issue commis-  
sions to the trustees elected.

Overruled by O-4446

We are in receipt of your letter of March 28, 1939,  
wherein you request our opinion in response to the following  
questions:

1. What body should canvass the returns and declare  
the results of elections for trustees in common school dis-  
tricts?
2. In independent districts of less than five hun-  
dred scholastics?
3. Who should issue commissions to trustees elected  
in common school districts?
4. In independent school districts of less than  
five hundred scholastics?

Article 2745, Revised Civil Statutes, provides for an  
election to be held on the first Saturday in April of each  
year for the selection of trustees for common school districts.

Article 2748, Revised Civil Statutes, provides that  
"said trustees may appoint three persons for each voting box

Hon. E. D. Hall, April 24, 1939, Page 2

of the district, who shall be qualified voters of the district and who shall hold such election and make returns thereof to said trustees within five days after such election." After making further provisions relative to the conduct of the election, the Article then provides that "said board of trustees shall meet and canvass the returns of said election within five days after returns have been made, and declare the result of said election and issue to the persons so elected their commissions as such trustees and shall notify the county judge or the county superintendent, if the county has a superintendent."

Article 2746a, Revised Civil Statutes as amended in 1935, reads as follows:

"All of the ballots for the election of a school trustee in common school districts and in independent school districts having fewer than five hundred (500) scholastics as shown by the last preceding scholastic census roll approved by the State Department of Education and exclusive of transfers shall be printed with black ink on clear white paper, of sufficient thickness to prevent the marks thereon being seen through the paper, and be of uniform style and dimension; at the top of the ballot there shall be printed 'Official Ballot, \_\_\_\_\_ Independent School District', the number or name of the school district in which the election is to be held to be filled in by the judge of the county when he orders the ballots printed. Any person desiring to have his name placed on said official ballot, as a candidate for the office of trustee of a common school district or of an independent school district as herein provided shall, at least ten days before said election, file a written request with the county judge of the county in which said district is located, requesting that his name be placed on the official ballot, and no candidate shall have his name printed on said ballot unless he has complied with the provisions of this Act; provided that five or more resident qualified voters in the district may request that certain names be printed. The county judge, upon receipt of such written request, and at least five days before the election, shall have the ballots printed as provided in this Act, placing on

Hon. K. D. Hall, April 24, 1939, Page 3

the ballot the name of each candidate who has complied with the terms of this Act, and deliver a sufficient number of printed ballots and amount of supplies necessary for such election to the presiding officer of the election at least one day before said election is to be held, said election supplies, ballots, boxes, and tally sheets to be delivered by the county judge by mail or in any other manner by him deemed best, to the presiding officer of said election in sealed envelopes which shall not be opened by the election officer until the day of the election. The expenses of printing the ballots and delivering same to the presiding officer, together with other expenses incidental to said election shall be paid out of the available maintenance funds belonging to the school district in which said election is held, or to be held. The officers of said election shall be required to use the ballots so furnished by the county judge as provided herein. The election officers shall make returns of said election to the county judge and certify the result in the same manner as is now required by law, and said ballot boxes which shall have been furnished by local school officials shall be sent to the county judge and said election returns shall be canvassed by the Commissioners' Court and together with ballot boxes shall be safely preserved for a period of three months next after the date of the election."

Article 2776 Revised Civil Statutes regulates generally elections for independent school districts. It provides for returns to be canvassed by the board of trustees of the district in which the election is held. No express amendment has been made to that statute since 1915.

Article 2746a was enacted substantially in its present form in 1925. Chapter 128 page 329 General Laws of Texas, Thirty-ninth Legislature. There was an amendment thereto by the Forty-fourth Legislature in 1935 but the amendment did not touch upon the question with which we are here concerned. As noted above, Article 2746a provides for election returns to be canvassed by the Commissioners' Court. In respect to the body which should canvass the returns, declare the results and issue certificates of election, Article 2746a superseded Article 2776 as to independent school districts having a scholastic population of less than five hundred, as shown by the last preceding scholastic census roll approved by the State Depart-

ment of Education. It was expressly held in the case of Thomas v. McGown, 94 S. W. (2d) 839, "that an election in an independent school district having less than five hundred scholastics was not completed until the returns had been canvassed by the Commissioners' Court, as provided in Article 2746a.

Our answer to your second and fourth questions therefore is that the Commissioners' Court of the county in which an election is held in an independent school district of less than five hundred scholastics is the body which should canvass the returns, declare the result, and issue commissions to trustees elected.

There has not been a great deal of change in the reading of Article 2746 since its original enactment. It appeared as Article 2819 and 2820 in the complete Texas statutes of 1920. That article relates to elections in common school districts. While Article 2746a related to all common school districts, it will be noted that the same did not cover all of the field occupied by Article 2746. The last mentioned Article provided for the appointment of persons to hold the elections, for notice of elections, and for the fixing of the place thereof. Therefore, it is apparent that 2746a did not repeal Article 2746 in whole. It is probable, however, that Article 2746a did supersede Article 2746 as pertains to the body which should canvass returns and declare the results of such elections until the amendment and re-enactment of Article 2746 in 1937. In that year Article 2746 was amended in certain respects, and was substantially re-enacted. Such statute as re-enacted provides that the board of trustees shall canvass the returns of such elections and declare the results thereof and issue commissions to the trustees elected.

A new enactment abrogates any former act on the same subject with which it clearly and manifestly conflicts to the extent of the inconsistency or repugnancy between the two. *Whittemberg v. Craven*, 258 S. W. 152; *St. Louis B. & M.L. Co. v. Maicofich*, 221 S. W. 582; 30 Tex. Jur. p. 137. Article 2746 having been re-enacted in 1937, subsequent to the passage of Article 2746a, had the effect of superseding Article 2746a, so far as common school districts are concerned in respect to the body which shall canvass the returns, declare the results and issue commissions.

Our answer to your first and third questions, therefore, is that the board of trustees of the common school district in which the election is held is the proper body to canvass the returns, declare the results and issue commissions to the persons

Hon. K. D. Hall, April 24, 1939, Page 5.

elected.

Yours very truly

ATTORNEY GENERAL OF TEXAS

*Glenn R. Lewis*

By

(Signed)

Glenn R. Lewis  
Assistant

GRL:MR

APPROVED:

*Gerald C. Mann*

(Signed)

Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS